

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

**UNITED STATES OF AMERICA,
PLAINTIFF,**

CASE NO. 2:06CR94-WKW

v.

**WILLIE DEWHART,
DEFENDANT.**

**NOTICE OF INTENT TO USE AN AFFIRMATIVE DEFENSE OF INSANITY, AND/OR,
DIMINISHED CAPACITY PURSUANT TO FEDERAL RULE OF CRIMINAL
PROCEDURE 12.2(b)**

Comes now Willie Dewhart by and through undersigned Counsel and files this his Notice of Intent to Use an Affirmative Defense of Insanity or Diminished Capacity Pursuant to Federal Rule of Criminal Procedure 12.2(b) and in support thereof states the following:

1. The undersigned requested a psychological examination on or about April 26, 2006 based on Dewhart's past and present mental conditions.

2. An evaluation was conducted for competency at the Federal Correctional Institution, Lexington, Kentucky. Dr. Karen Milliner determined Dewhart was not competent to stand trial. She suggested Dewhart might benefit from competency restoration treatment. On October 10, 2006 the Court ordered Dewhart committed for competency restorative treatment and a competency evaluation at the time of the offense.

3. Dewhart was sent to the U.S. Medical Center for Federal Prisoners at Springfield, MO where he has been determined competent to stand trial and at the time of the offense.

4. On June 8, 2007 a report was prepared by J. E. Gunja, Warden, at Springfield, MO wherein other reports were incorporated. Counsel received this report some time before the July 7, 2007 competency hearing.

5. At the competency hearing counsel for Dewhart asked for Government funds to have an independent psychological evaluation and a delay in the competency determination. The Court directed counsel to file appropriate motions within 10 days.

6. It should be no surprise to the Government that Dewhart's mental condition and

competency are material issues in his defense. The final determination may not be determined without a defense selected psychological expert evaluating him for competency to stand trial and at the time of the instant offense. Counsel is now required to file out of time an affirmative defense pursuant to Federal Rule of Criminal Procedure 12.2(b). This has been necessitated by the late developments in Court ordered evaluations and the inconsistencies in the findings at Springfield.

7. It is anticipated that the Government will be heard to argue that Dewhart should have pled this affirmative defense much earlier in the process. Late notice of the affirmative defense should prove no hardship to the Government given the fact that the Government has a psychological evaluation for competency prepared by Department of Justice employees indicating that Dewhart is competent. Additionally, it was determined that his allegations of incompetency were attributed to malingering. There is no last minute need for the Government to have him evaluated given the fact they have a current evaluation that can be used in this case and the availability of witnesses to contradict Dewhart's defense. Further, the Government has impeachment available based on the Bureau of Prisons psychological evaluation.

8. Wherefore based on the above it is respectfully requested that the Court allow the late filing of the affirmative defense of insanity mental defect, or disease pursuant to Federal Rule of Criminal Procedure 12.2(b).

Respectfully submitted

s/Susan G. James
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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2007 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Tommie Brown Hardwick
Assistant United States Attorney
P.O. Box 197
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Respectfully submitted,

s/Susan G. James
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